IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 479 of 1999.

Date of decision: 24.3.2006.

State of H.P. ... Appellant

Versus

Jai Dyal & Ors. … Respondents

Coram :

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for reporting?[1] Yes.

For the appellant: Mr. J.S. Guleria, Law Officer.

For the respondents: Mr. N.K. Thakur, Advocate.

Deepak Gupta, J. (Oral):

This case depicts gross callousness and negligence and in fact reflects the way in which the police authorities have virtually connived with the accused to thwart the efforts made by poor illiterate local villagers to protect their forest.

On 18.12.1993 three ladies PW-5 Kamla Devi, PW-6 Jaram Devi and PW-7 Premi Devi who are members of the Mahila Mandal managed to stop a tractor, which was carrying 31 scants of illicitly felled timber. Four accused were travelling in the tractor in question. The driver of the truck was also present on the spot. The police was informed on 18.12.1993 itself and the FIR was lodged on the same date. The FIR is Ext.PW9/A. A perusal of the ruka Ext.PW9/B shows that it is sent by Ran Singh, Incharge, Thana Udaipur to ASI Mohan Lal,

[1]Whether reporters of Local Papers may be allowed to see the judgment? Yes.

Investigating Officer, Police Station Udaipur. This ruka is dated 18.12.1993 and the time is shown as 5.00P.M. In this ruka it is mentioned that the police had received information that accused Jai Dyal, Chet Ram, Shadi Ram and Devi Dass had illegally felled timber from Ratoli forest and were transporting it illegally. In case a raid is conducted, then the timber may be recovered. Unfortunately, Ran Singh who was the Investigating Officer expired and could not be examined.

The police for reasons best known to it neither seized the tractor nor arrayed the driver and owner of the tractor as accused under the provisions of the H.P. Forest Transit Rules, 1978 framed under the provisions of Sections 41 and 42 of the Indian Forest Act.

Three of the prosecution witnesses have turned hostile and have not at all supported the prosecution. The prosecution has been supported only by PW-5 Kamla Devi, PW-6 Jaram Devi and PW-7 Premi Devi. These witnesses have stated that the accused were sitting on the tractor, but they have been unable to say whether the timber belonged to the accused or to somebody else. These witnesses also clearly state that the driver of the tractor is not one of the accused. He was present when the tractor was intercepted. In fact, from a perusal of the statements of these witnesses, it appears that it was these witnesses who were vigilant members of the Mahila Mandal and had stopped the tractor, unloaded the timber and called the police. The police instead of taking action in accordance with law and proceeding against the tractor driver and owner or at least recording their statements only arraigned four persons travelling in the tractor as accused.

No evidence has been led to directly implicate the accused either with the cutting of the timber or to show that the timber was

being actually transported by them. Except for the fact that the accused were sitting on the tractor at the time when PW-5 Kamla Devi, PW-6 Jaram Devi and PW-7 Premi Devi saw them, there is nothing to connect them with the timber. Therefore, there is no option but to acquit them. Therefore, the appeal filed by the State has to be dismissed. The appeal is accordingly dismissed and the bail bonds discharged.

Before parting with the case, I must observe that the manner in which the case has been dealt with and the investigation conducted by the police, leaves much must to be desired. The incident had taken place in Udaipur, a part of Himachal Pradesh which has very little forest cover. The local villagers tried to protect their flora and fauna. The members of the Mahila Mandal were vigilant enough and took initiative to stop the illegal timber from being transported. It is apparent that the women were not educated but despite lack of education they were aware of their rights and also aware of the loss which such felling of trees would cause to the environment. As against the admirable conduct of the poor ladies, the conduct of the Investigating Officer and the police shows total carelessness on their part. If the police had properly investigated the matter, the real culprits (whether they were the accused or somebody else) could have been nailed. This case fails only due to the lack of imagination in investigating the case. It was imperative to have arraigned the tractor owner and driver as accused. In case this had been done the truth could easily have been unravelled. In fact, prima facie there appears to have some connivance. However, since the Investigating Officer is now dead, nothing further can be done in the matter. A copy of this judgment be sent to the Secretary (Home) and

the Director General of Police, H.P. to ensure that such lax investigation is not done by any police officials, in future.

(Deepak Gupta),
Judge

March 24, 2006
(BSS)